



DEPARTMENT OF COMMERCE

International Trade Administration

[A-552-801]

Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Notice of Court Decision Not in Harmony with the Results of Antidumping Administrative Review; Notice of Amended Final Results

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: On September 27, 2021, the U.S. Court of International Trade (CIT) issued its final judgment in *GODACO Seafood Joint Stock Co. v. United States*, Consol. Court no. 18-00063, sustaining the Department of Commerce (Commerce)’s second remand results pertaining to the administrative review of the antidumping duty (AD) order on certain frozen fish fillets (fish fillets) from the Socialist Republic of Vietnam (Vietnam) covering the period August 1, 2015, through July 31, 2016. Commerce is notifying the public that the CIT’s final judgment is not in harmony with Commerce’s final results of the administrative review, and that Commerce is amending the final results with respect to the dumping margin assigned to Can Tho Import-Export Joint Stock Company (CASEAMEX), Green Farms Seafood Joint Stock Company (Green Farms), Hung Vuong Corporation (HVG), NTSF Seafoods Joint Stock Company (NTSF), Southern Fishery Industries Company, Ltd. (South Vina), and Vinh Quang Fisheries Corporation (Vinh Quang).

DATES: Applicable October 7, 2021.

FOR FURTHER INFORMATION CONTACT: Brittany Bauer, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-3860.

SUPPLEMENTARY INFORMATION:

Background

On March 23, 2018, Commerce published its *Final Results*.¹ Commerce assigned mandatory respondent GODACO Seafood Joint Stock Company (GODACO) a margin based on total adverse facts available (AFA). Commerce also assigned GODACO's rate to the companies in the review who were eligible for separate rates, including CASEAMEX, Green Farms, HVG, NTSF, South Vina, and Vinh Quang. Additionally, Commerce rejected a withdrawal of request for review filed by Golden Quality Seafood Corp. (Golden Quality) and subsequently found Golden Quality to be part of the Vietnam-wide entity.²

CASEAMEX, GODACO, Golden Quality, Green Farms, HVG, NTSF, South Vina, and Vinh Quang appealed Commerce's *Final Results*. On April 1, 2020, the CIT remanded the *Final Results* to Commerce, directing Commerce to: (1) provide further explanation regarding its application of AFA to GODACO; and (2) consider South Vina's arguments regarding the assignment of a separate rate. In this opinion, the CIT did not address substantive arguments regarding the appropriate rate to be applied to the other separate rate respondents, as that rate was based on GODACO's rate.³

In its First Remand Redetermination, issued in July 2020, Commerce continued to apply AFA to GODACO and continued to apply GODACO's rate (*i.e.*, \$3.87/kilogram) to the separate rate companies, including South Vina.⁴ In January 2021, the CIT sustained Commerce's application of total AFA to GODACO and selection of the AFA rate as in accordance with law; however, the CIT remanded Commerce's determination to it for a second time, instructing

¹ See *Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Final Results, Final Results of No Shipments, and Partial Rescission of the Antidumping Duty Administrative Review; 2015-2016*, 83 FR 12717 (March 23, 2018) (*Final Results*), and accompanying Issues and Decision Memorandum (IDM).

² *Id.*

³ See *GODACO Seafood Joint Stock Co. v. United States*, 435 F. Supp. 3d 1342 (CIT 2020). While interested parties challenged several aspects of Commerce's *Final Results*, the Court sustained the *Final Results* in all other respects.

⁴ See *Final Results of Redetermination Pursuant to Court Remand, GODACO Seafood Joint Stock Co. v. United States*, Court No. 18-00063, Slip Op. 20-42 (CIT April 1, 2020), dated July 21, 2020 (First Remand Redetermination), available at <https://access.trade.gov/resources/remands/20-42.pdf>.

Commerce to reevaluate the rate assigned to the non-individually examined companies receiving separate rates who were parties to the litigation.⁵

In its Second Remand Redetermination, issued under protest in April 2021, Commerce recalculated the rate assigned to the separate rate companies using an average of the separate rates assigned in the four prior administrative reviews.⁶ On September 27, 2021, the CIT sustained Commerce's Second Remand Redetermination.⁷

Timken Notice

In its decision in *Timken*,⁸ as clarified by *Diamond Sawblades*,⁹ the Court of Appeals for the Federal Circuit held that, pursuant to section 516A(c) and (e) of the Tariff Act of 1930, as amended (the Act), Commerce must publish a notice of court decision that is not “in harmony” with a Commerce determination and must suspend liquidation of entries pending a “conclusive” court decision. The CIT's September 27, 2021, judgment constitutes a final decision of the CIT that is not in harmony with Commerce's *Final Results*. Thus, this notice is published in fulfillment of the publication requirements of *Timken*.

Amended Final Results

Because there is now a final court judgment, Commerce is amending its *Final Results* with respect to the dumping margin assigned to CASEAMEX, Green Farms, HVG, NTSF, South Vina, and Vinh Quang. The rate assigned to these six separate rate companies is \$0.89 per kilogram.

Cash Deposit Requirements

⁵ See *GODACO Seafood Joint Stock Co. v. United States*, 494 F. Supp. 3d 1294 (CIT 2021).

⁶ See *Final Results of Redetermination Pursuant to Court Remand, GODACO Seafood Joint Stock Co. v. United States*, Court No. 18-00063, Slip Op. 21-3 (CIT January 6, 2021), dated April 5, 2021 (Second Remand Redetermination).

⁷ See *GODACO Seafood Joint Stock Co. v. United States*, Court No. 18-00063, Slip Op 21-131 (CIT September 27, 2021).

⁸ See *Timken Co. v. United States*, 893 F.2d 337 (Fed. Cir. 1990) (*Timken*).

⁹ See *Diamond Sawblades Manufacturers Coalition v. United States*, 626 F.3d 1374 (Fed. Cir. 2010) (*Diamond Sawblades*).

Because CASEAMEX, Green Farms, HVG, NTSF, and Vinh Quang have a superseding cash deposit rate, *i.e.*, there have been final results published in a subsequent administrative review, we will not issue revised cash deposit instructions to U.S. Customs and Border Protection (CBP). This notice will not affect the current cash deposit rate for those exporters. For South Vina, which does not have a superseding cash deposit rate, Commerce will issue revised cash deposit instructions to CBP.

Liquidation of Suspended Entries

At this time, Commerce remains enjoined by CIT order from liquidating entries that were exported by CASEAMEX, GODACO, Golden Quality, Green Farms, HVG, NTSF, South Vina, or Vinh Quang, and were entered, or withdrawn from warehouse, for consumption during the period August 1, 2015, through July 31, 2016. These entries will remain enjoined pursuant to the terms of the injunction during the pendency of any appeals process.

In the event the CIT's ruling is not appealed, or, if appealed, upheld by a final and conclusive court decision, Commerce intends to instruct CBP to assess antidumping duties on unliquidated entries of subject merchandise exported by CASEAMEX, GODACO, Golden Quality, Green Farms, HVG, NTSF, South Vina, and Vinh Quang in accordance with 19 CFR 351.212(b).

Notification to Interested Parties

This notice is issued and published in accordance with sections 516A(c) and (e) and 777(i)(1) of the Act.

Dated: September 30, 2021.

Christian Marsh,

Acting Assistant Secretary

for Enforcement and Compliance.

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